IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2761 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDRASINH CHANDANSINH RAOL & 3 - Appellant(s)
Versus
KALABHAI MANGABHAI THAKOR & 3 - Defendant(s)

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Appearance :
MR SANDIP C SHAH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.
MS MEGHA JANI for Defendant(s) : 3,
MR JV JAPEE for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/02/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal arises out of the judgment and order dated 30.11.1999 passed by the Motor Accident Claims Tribunal (Aux,), Ahmedabad in MAC Petition No. 171 of 1997.

2. In a vehicular accident which took place on 4.5.1991, the appellant – claimant received serious bodily injuries. When the claimant was travelling in a car, the car met with an accident when it dashed against the truck insured by the opponent No.3 – Insurance Company. The driver of the car as well as the person sitting in the front seat received fatal injuries. The claimant who was sitting in the back seat of the car received serious bodily injuries. He, therefore, filed the above mentioned claim petition seeking compensation of Rs.3,00,000/-. The Tribunal awarded a sum of Rs.67,560/- to be recovered with interest at the rate of 12% per annum from the date of the claim petition till realization. The claimant has, therefore, filed this appeal seeking enhancement of the compensation.

3. With respect to the nature of the accident, the fact that the claimant received injuries in question in the said accident and the negligence of the vehicle insured by opponent No.3 – Insurance Company in causing such an accident, there is no dispute since the opponents have not preferred any appeal against the judgment of the Claims Tribunal.

We have, therefore, focused mainly on the question of compensation awarded to the claimant.

4. Learned advocate Mr Sandip C Shah appearing for the appellant submitted that the Tribunal erred in believing the monthly income of the claimant at Rs.1,500/- when there was evidence on record to suggest that the claimant was a partner in a partnership firm engaged in the business of running an ice factory. He further submitted that the claimant had received several fractures. He had suffered permanent disablement. He had to undergo several operations and extensive treatment. Considering these aspects of the matter, the amount of Rs.15,000/- awarded for pain, shock and suffering, according to him, is inadequate.

5. On the other hand, learned advocate Ms Megha Jani with Mr Chirayu Mehta appearing for opponent No.3 – Insurance Company opposed the appeal. She submitted that the award by the Claims Tribunal calls for no interference. It was contended that there is no documentary evidence to show the income of the claimant from an ice factory. It was further contended that even the certificate of the doctor has not been exhibited since the doctor was not examined as witness before the Claims Tribunal.

6. Having heard the learned advocates appearing for the parties, we find that though the appellant did not produce any income-tax returns to establish

very large income from his involvement in the ice factory, nevertheless there were some documents suggesting that he was a partner in the aforesaid firm and the said firm had received a notice from the Government with respect to the functioning of the ice factory. Thus, the appellant was not earning his livelihood through manual labour and was engaged in some skilled special employment. Even then, considering that he had not produced any income-tax returns to establish large income, in our view, it would be appropriate to take his income at Rs.3,000/- per month uniformly for the purpose of calculating his loss of earning capacity. Both the sides had agreed to accept 12% functional disability. We have no reason to deviate from this. Thus, the claimant, in our view, had suffered future economic loss at the rate of Rs.360/- per month or Rs.4,320/- per annum. Preserving the multiplier 16 adopted by the Claims Tribunal for the claimant aged 39 years on the date of the accident, his future economic loss would be Rs.69,120/-.

7. The claimant had disposed that he was unable to discharge his duties for four months. He would, therefore, receive actual loss of income of Rs.12,000/- (i.e. Rs.3000 x 4).

8. The claimant had received several injuries. He had received fractures on his jaws and on his arms. He had to undergo surgeries and, according to him, he had to get surgery done to put nuts in his

broken bones. He was also rendered unconscious for a few days. Considering these aspects of the matter and also considering that the injuries left permanent disabilities, the compensation of Rs.15,000/- for pain, shock and suffering awarded by the Tribunal, in our view, is inadequate. Having taken into account the nature of the injuries and the permanent disablement of the claimant, the said sum is enhanced to Rs.25,000/-. The Tribunal granted Rs.12,000/- for medical treatment and expenses which is left unaltered. The Tribunal did not grant any amount for special diet, attendant charges and transportation. It has been brought on record that the claimant was treated as an indoor patient for a considerable period and had to undergo surgeries. Considering these aspects of the matter, we grant a sum of Rs.10,000/- for attendant charges, Rs.5,000/- for special diet and Rs.10,000/- for transportation charges. Thus, the claimant shall receive a total of Rs.1,31,120/-. Since the Claims Tribunal has already awarded Rs.67,560/-, under this appeal, the claimant shall receive additional compensation of Rs.63,560/- alongwith proportionate costs and interest at the rate of 9% per ammum from the date of the claim petition till realization.

The enhanced compensation shall be deposited by opponent No.3 – Insurance Company before the Tribunal latest by 30th March, 2007.

9. Considering that the claimant is an educated person, the accident took place in the year 1999 and that he requires some larger disbursements, it is provided that the Tribunal shall invest 70% of the said amount in the fixed deposit in any nationalized bank near the residence of the claimant for a period of three years, with usual conditions about prohibition against premature encashment of/encumbrance over the deposit, with permission to the claimant to withdraw interest periodically accruing on the fixed deposit and with a direction to the bank not to permit the account to be operated by any power of attorney holder other than a close relative of the claimant.

The remaining amount shall be disbursed to the claimant through an account payee cheque in favour of the claimant after proper verification and after informing him about the amounts being invested/disbursed and the terms and conditions of the investment.

10. With these directions, the appeal stands disposed of.

[M.S. SHAH, J.]

[AKIL KURESHI, J.]

sundar/-